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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. JESSE MARIO VASQUEZ, Defendant and Appellant.	G031953 (Super. Ct. No. 01CF1335) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Richard F. Toohey, Judge. Affirmed.

Corinne S. Shulman, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Lilia E. Garcia and Douglas C. S. Lee, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant Jesse Mario Vasquez of attempted murder and shooting from a motor vehicle and, in addition to various firearm enhancement allegations, the jury found true the allegation that the attempted murder was committed

with premeditation and deliberation. Defendant contends the court erred in giving instructions on flight after crime (CALJIC No. 2.52) and consciousness of guilt—falsehood (CALJIC No. 2.03). He further argues the court erred in refusing to conduct a hearing to determine the competence of the witness interpreter. We disagree and affirm.

FACTS

Defendant left a party one evening with three friends and, while enroute to his girlfriend's house, learned that an unwanted visitor had stopped by his grandmother's house looking for him. The visitor, Uriel Arellano, had previously dated defendant's girlfriend, and according to defendant, Arellano also owed him some money. Defendant had told Arellano never to come to his house and felt Arellano "disrespected" him by stopping by. After discovering Arellano was no longer at the grandmother's house, defendant drove around the surrounding area until he found Arellano standing outside with Jose Garcia near Garcia's home.

Defendant was driving a Lincoln Navigator which belonged to Garcia's cousin. As Garcia approached the vehicle, he recognized defendant as the driver. Defendant asked Garcia, "what was that son of a bitch doing there," referring to Arellano. Garcia replied, "in my house, I can have anyone I like." According to Garcia, defendant then pointed at Arellano and said, "this son of a bitch is going to die." Defendant grabbed a small pistol from inside the vehicle and started shooting. Arellano sustained gunshots wounds to his left knee, right buttock, and lower back. Defendant immediately drove away from the scene.

Defendant testified that Arellano flipped him off when Garcia told him defendant wanted to talk with him. Defendant started to get out of the vehicle when his front seat passenger handed him the gun and said, "Just shoot the motherfucker." Upon seeing the weapon, Garcia said, "You don't have the balls to do nothing with that." To

which defendant responded, "You want to see?" Garcia denied making such a comment. Arellano did not hear what was said before the shooting commenced, but he saw defendant open the car door and stick his hand outside of the vehicle, pointing the weapon at Arellano's feet. Defendant later testified, "I was aiming to the ground. I just wanted to scare him. I wanted him to run or something . . . ."

The forensic firearm examiner testified that a bullet shot into concrete may ricochet off concrete and strike another object depending on the angle and height from which the weapon was fired. But he indicated it was unlikely a bullet from a small caliber weapon, like the one used in the present case, would have sufficient velocity to penetrate flesh after ricocheting off concrete.

Defendant also claimed that he was standing outside of the vehicle when he fired the gun, while Arellano and Garcia testified that he never got out of the vehicle. Arellano gave a different account to the officer who interviewed him immediately after the shooting. At that time, he said defendant was exiting the vehicle when he started shooting and after the shooting, he entered the vehicle and drove away.

While being interviewed by the police, defendant initially denied knowing about the shooting but ultimately admitted his involvement. He told Officer Rondou, "I didn't want to hit him, you know. I just wanted to scare the shit out of him." Although defendant originally told the police he threw the gun into a ditch, he later disclosed that he had hidden the gun under the bed liner of a pickup truck parked at his grandmother's house; the police subsequently recovered the gun from that location along with six shell casings.

DISCUSSION

Jury Instructions

Over defendant's objection, the trial court instructed the jury pursuant to CALJIC No. 2.52 as follows: "The flight of a person immediately after the commission of a crime, or after [he] is accused of a crime, is not sufficient in itself to establish [his] guilt, but is a fact which, if proved, may be considered by you in the light of all other proved facts in deciding whether a defendant is guilty or not guilty. The weight to which this circumstance is entitled is a matter for you to decide."

Defendant argues the instruction constituted prejudicial error by lessening the People's burden of proof and allowing the jury to infer from the mere fact that he left the scene that he intentionally shot the victim. We are not persuaded.

Generally, it is appropriate to give the flight instruction when there is evidence to show the defendant left the scene of the crime "'under circumstances suggesting that his movement was motivated by a consciousness of guilt.' [Citation.]" (*People v. Roybal* (1998) 19 Cal.4th 481, 517.) But "evidence that the accused left the scene and went home is not evidence of flight that necessarily supports an inference of consciousness of guilt. [Citations.]" (*People v. Pensinger* (1991) 52 Cal.3d 1210, 1244.) While evidence of "the physical act of running" or "the reaching of a faraway haven" is not a prerequisite for the instruction, "[f]light manifestly . . . require[s] . . . a purpose to avoid being observed or arrested." (*People v. Crandell* (1988) 46 Cal.3d 833, 869, disapproved on another ground in *People v. Crayton* (2002) 28 Cal.4th 346, 364-365.)

Here, defendant admitted to the shooting, but claimed he lacked the mental states needed to convict him of attempted murder and shooting from a vehicle because he shot at the ground, not at the victim, in an effort to scare him. In contrast, Garcia's testimony about the statements defendant made before firing the gun indicated he intentionally shot Arellano. In the face of such evidence, it was entirely reasonable for

the jury to infer guilt from defendant's act of leaving the scene immediately after the shooting. (See *People v. Visciotti* (1992) 2 Cal.4th 1, 60-61.)

Defendant also contends the flight instruction, combined with the instruction that any false or deliberately misleading statements could be considered "as a circumstance tending to prove a consciousness of guilt" (CALJIC No. 2.03), violated his due process right to a fair trial by creating an irrational inference that he committed the charged offenses, as opposed to some lesser offense. Not so.

"A permissive inference violates the Due Process Clause only if the suggested conclusion is not one that reason and common sense justify in light of the proven facts before the jury. [Citations.] This test permits a jury to infer, if it so chooses, that the flight of a defendant immediately after the commission of a crime indicates a consciousness of guilt." (*People v. Mendoza* (2000) 24 Cal.4th 130, 180.) And "[i]t is for the jury to determine to which offenses, if any, the inference should apply." (*Ibid*.)

Similarly, as to the false statements instruction, "[a] reasonable juror would understand 'consciousness of guilt' to mean 'consciousness of some wrongdoing' rather than 'consciousness of having committed the specific offense charged.'" (*People v. Crandell, supra,* 46 Cal.3d at p. 871.) The challenged instruction provides, "If you find that before this trial [the] defendant made a willfully false or deliberately misleading statement concerning the crime[s] for which [he] is now being tried, you may consider that statement as a circumstance tending to prove a consciousness of guilt. However, that conduct is not sufficient by itself to prove guilt, and its weight and significance, if any, are for you to decide." The instruction "clearly impl[ies] that the evidence is not the equivalent of a confession and is to be evaluated with reason and common sense." (*Ibid.*) Further, it "do[es] not direct or compel the drawing of impermissible inferences in regard thereto." (*Ibid*.)

Witness Interpreter

Garcia testified using an interpreter; defense counsel challenged the interpreter's competence and asked to have the interpreter replaced. Defense counsel explained that defendant, who is bilingual, had indicated "certain things" were not being interpreted "and there is room for interpretation." A slang term, in particular, had been misinterpreted, and defense counsel believed "there is a hard of hearing problem" based on the fact he had to repeat things.

The court denied the request without conducting a hearing into the interpreter's competence, indicating the courtroom was new and, acoustically, "there is no problem with anybody hearing what somebody else said." The court further stated that the interpreter had been used in many of its trials without "any complaint from any counsel or anyone regarding his credentials or competency." In addition, the court indicated that, while the witness might be having some difficulty with the process, "not unlike any other witness who is utilizing an interpreter," it "did[not] see anything in the interpretation . . . that would cause [it] any concern . . . ."

Defendant argues the court erred by denying his request to replace the interpreter without conducting a hearing into the interpreter's competence. He further asserts the error violated his constitutional right to confront the witnesses against him. The Attorney General contends defendant's constitutional rights were not implicated by the court's refusal to replace the interpreter and no abuse of discretion occurred.

It is well settled that a defendant is entitled to a competent witness interpreter. (*People v. Aranda* (1986) 186 Cal.App.3d 230, 237.) And "[t]he question of an interpreter's competence is a factual one for the trial court. [Citations.]" (*Ibid.*; see also *People v. Mendes* (1950) 35 Cal.2d 537, 543 ["competence of the interpreter is ordinarily for the trial court to determine"].)

Nonetheless, there is merit to defendant's contention that the deprivation of a competent witness interpreter implicates a fundamental constitutional right. In *People*

v. Roberts (1984) 162 Cal.App.3d 350, the court noted the "[d]enial of proper interpreter services may impair a defendant's right to confront adverse witnesses. [Citation.]" (*Id*. at p. 356, fn. 6.) Similarly, in *People v. Johnson* (1975) 46 Cal.App.3d 701, the court concluded that when the interpreter fails to accurately translate counsel's questions and the witness's answers, "counsel [was] helpless in examination of the . . . witness and no meaningful opportunity to cross-examine him existed." (*Id*. at p. 704.) Thus, any error in the court's refusal to conduct a hearing to determine the interpreter's competence is reviewed under the standard set forth in *Chapman* v. *California* (1967) 386 U.S. 18, 23.

Here, even if the court erred in refusing to hold a hearing into the interpreter's competency, the error was harmless beyond a reasonable doubt. Defense counsel specifically called into question two areas of the interpreter's competency relating to Garcia's testimony. One area involved questions relating to Garcia's actions after the shooting "deal[ing] with the ambulance and the house . . . ." When the prosecutor asked Garcia if he saw any blood on Arellano after the shooting, Garcia said, "No, not blood. Because, as soon as he was hit, we run to door of the ambulance." The prosecutor asked if the ambulance was already there when Arellano was shot, and Garcia clarified he ran to the house to grab the phone after Arellano said he had been "hit," but that a neighbor had already called the police.

The other area of discrepancy involved a Spanish slang term. This issue was cleared up when Garcia resumed the stand shortly after the court denied counsel's request. The interpreter asked the court to admonish Garcia saying, "Your Honor, the witness is not paying enough attention to the translation." The court told Garcia, "Slow down a little bit. [¶] Listen carefully to the question, and wait until the interpreter finishes the translation before you attempt to answer the question." Defense counsel was attempting to determine whether Garcia told the police defendant had said "what is that son of a bitch doing here," or whether he had said, "what is that motherfucker doing here," when he first arrived at the scene. The interpreter clarified that the term, "hijode

perra" [*sic*] can be interpreted either as "son of a bitch" or "motherfucker." To Garcia it meant "your mother a dog, [or] something like that." Garcia insisted that he told the police defendant said, "what is this 'hijode perra' [*sic*] doing here," even though this statement did not appear in the transcript of his taped interview.

Any discrepancy relating to Garcia's conduct after the shooting is irrelevant to the issue of defendant's culpability for the charged offenses. As to the slang term, defense counsel effectively cross-examined Garcia about his use of the term and the fact it did not appear in the transcript of his statement to the police. Thus, the record fails to show that defense counsel lacked a meaningful opportunity to cross-examine Garcia or that he was otherwise prejudiced by the court's refusal to conduct a hearing to determine the interpreter's competency.

DISPOSITION

The judgment is affirmed.

RYLAARSDAM, J.

WE CONCUR:

SILLS, P. J.

ARONSON, J.